

Remarks

Claims 1-12 are pending. With this Response, claims 1 and 9 are amended, and claims 2 through 4 are cancelled. Upon entry of the current amendments, claims 1 and 5 through 10 remain pending. Claims 11 and 12 remain withdrawn. No new matter is entered by these amendments.

This preliminary amendment is filed concurrently with a Request for Continued Examination following a decision upon appeal in which the Board determined that claims 1-10 as pending upon appeal would have been obvious over Ando in view of Karevaara, and as further combined with each of Gray and Kaufman.

This rejection is traversed because the combination of Ando and Karevaara fails to teach a container system in which the enveloping layer of shrinkwrap is intended to remain on the container after the container lid is removed; and neither even remotely teach the idea of using an enveloping, secured layer of shrinkwrap to trap a non-adhesive label in position that remains trapped even after the shrinkwrap is dislodged or otherwise modified to allow the container lid to be removed. Indeed, providing Ando/Karevaara with a secured shrinkwrap layer that is intended to remain in its enveloping position even after lid removal would frustrate the primary intended function of Ando/Karevaara as discussed further below.

Independent claim 1 has been amended to state that the layer of shrinkwrap envelopes the container sidewall and traps a non-adhesive label between the sidewall and the shrinkwrap. When the shrinkwrap is dislodged, torn or otherwise separated from the lid and rim to allow the lid to be removed, a discontinuity around the sidewall helps hold the shrinkwrap on the tapered sidewall. The label remains trapped by the secured shrinkwrap even when the lid is removed. Conventionally, when shrinkwrap is torn to allow lid removal from a tapered container, the shrinkwrap either falls away or, as is the case with the Ando/Karevaara combination, the shrinkwrap is intended to be removed for the Ando/Karevaara combination to work for its intended purpose.

The primary reference to Ando teaches a food container whose primary intended use involves storing instant food items that can be cooked in the container itself. A lid is secured in an airtight manner, and then the entire container is enveloped in a non-ventilating, heat shrinkable film. The film is used to improve the shelf life stability of food stored in the container. See col. 3, lines 9-14.

No features help trap the film on the container sidewall after the shrinkwrap is ripped open to allow the lid to be opened. No portion of the shrinkwrap is intended to remain on the container during cooking. No non-adhesive label is trapped between the film and the container sidewall.

The proposed combination of Karevaara with Ando does not cure the Ando deficiencies. Karevaara teaches a drinking cup having a storage configuration in which a handle is folded against the cup sidewall. To use, the handle is deployed to allow the user to hold the cup by the handle. When stacking these kinds of cups, the handles make it difficult to stack the cups straight because the handle causes the stacked cups to be skewed or tilted with respect to each other.

To overcome this problem, Karevaara uses a pair of annular features that are above and below the handle. The annular features provide a bearing surface when the cups are stacked, with the handle fitting into the "free space" between the features.

Notably, Karevaara is completely silent as to using a secured layer of shrinkwrap to trap a non-adhesive label against a container sidewall before or after the container lid is removed. Karevaara is completely silent as to any kind of shrinkwrap or any kind of non-adhesive label, trapped or otherwise. Lacking such a teaching, the proposed Ando/Karevaara combinations falls short of the claims and, therefore, fails to undermine inventive step.

Additional deficiencies show that the Ando/Karevaara combination is even further from the claims, and there is a strong negative bias in the combination that blocks the path to the present invention.

It is true that Karevaara teaches annular features on the sidewall of its cup. However, Karevaara does not use the annular features to help secure shrink wrap, but rather uses them to provide a space to tuck the folded handle during stacking. Thus, there

is no logical motivation to use the annular features of Karevaara on the side of the Ando container unless the Karevaara handle is also present.

However, once both the annular sidewall features and handle feature of Karevaara are used in the Ando container system, the resultant combination leads away from the present claims. Indeed, using a layer of secured shrinkwrap over the Karevaara cup structure to trap a non-adhesive label according to the present claims would destroy a primary intended function of the Karevaara cup. In the present invention, the layer of shrinkwrap traps the non-adhesive label against the sidewall. In the present invention, both the label and the shrinkwrap are intended to remain in position after the container is opened. The shrinkwrap is held in place by the discontinuity. The secured shrinkwrap, in turn, continues to trap the label even after the shrinkwrap is modified to allow the container lid to be removed.

In sharp contrast, the Ando/Karevaara combination, which includes both the annular features and handle feature of Karevaara, would never use a design pathway in which secured shrinkwrap remains in place to trap container features against the container sidewall. The folded handle of Ando/Karevaara is intended to be deployed during use. Any shrinkwrap enveloping the Ando/Karevaara sidewall would have to be removed to allow the handle to be deployed. Otherwise, secured shrinkwrap would trap the handle, preventing its deployment and thereby undermining the key function of Ando/Karevaara.

In short, the shrinkwrap of Ando/Karevaara can't remain in clinging position, but must be removed to allow handle deployment. Shrinkwrap in the Ando/Karevaara combination would not be left in place to perform the claimed trapping function.

Neither Gary nor Kaufman cure the deficiencies of Ando/Karevaara in this regard, as neither can overcome the negative bias against further modifying the Ando/Karevaara combination to arrive at the present invention along a path that frustrates a primary function of Ando/Karevaara.

In view of these remarks, it is respectfully submitted that the claims are in condition for allowance. Approval of the application and allowance of the claims are earnestly solicited. In the event that a phone conference between the Examiner and the

Applicants' undersigned attorney would help resolve any issues in the application, the Examiner is invited to contact said attorney at (651) 275-9804.

Respectfully Submitted,

Dated: Jan. 17, 2006

By: David B. Kagan
David B. Kagan, Reg. No. 33,406
Customer Number 33072
Phone: 651-275-9804
Fax: 651-351-2954